

ORDINANCE NO. 4507

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA AMENDING PORTIONS OF CHAPTER 49, ARTICLE V OF THE SCOTTSDALE REVISED CODE REGARDING WATER, SEWER EXTENSIONS, AND REIMBURSEMENT AGREEMENTS.

WHEREAS, the City of Scottsdale desires to continue to accommodate community needs for utility services without decreasing current standards of public health; and

WHEREAS, the City desires to adjust the current procedures to provide new water and sewer service in the City of Scottsdale through line extensions and to meet present and increasing demand and recover costs using a fair and proportionate structure.

WHEREAS, the City further desires to amend the provisions of Chapter 49 to provide clarity of language and improve the operations of the Water Resources Division of the City.

BE IT ORDAINED by the Council of the City of Scottsdale as follows:

Section 1.

Chapter 49, Article V, of the Scottsdale Revised Code, relating to Water and Sewer Extensions, and Reimbursement Agreements is amended as follows below:

ARTICLE V – WATER AND SEWER EXTENSIONS AND REIMBURSEMENT AGREEMENTS

Sec. 49-211. – Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Available means a public sewer line is located within five hundred (500) feet or a public water line is located within six hundred and sixty (660) feet of a property's boundary line, the respective line has sufficient capacity for the requested connection, an extension of and/or connection to the line can be engineered to meet the City's standards, and the physical circumstances of the right-of-way and the surrounding property will reasonably permit the extension and/or connection. This includes establishing gravity flow from the subject parcel to an existing public sewer line located within five hundred (500) feet of a property's boundary line. What is "reasonable" shall be determined in the sole judgment of the City.

Benefitting parcel means a parcel that does not currently receive water or sewer service and is adjacent to an existing or proposed water or sewer line which may facilitate connection at a future date.

Cost includes the actual cost of:

- (1) Construction of the public water or sewer line as determined by the construction contract price; and

- (2) Inspection and permit fees paid to the City and County; and
- (3) Engineering, surveying and other fees required for the preparation of plans and specifications.

City means the City of Scottsdale, Arizona.

County means Maricopa County, Arizona.

Developer or Owner shall include within its meaning the owner/builder of a Single-Family dwelling and shall be deemed to be the individual, firm, corporation, partnership, association, syndication, trust or other legal entity which is responsible for facilitating the owner's demand on the City water or sewer facilities.

Division dDirector means the division director of Water Resources or designee.

Extension participation program means a program that allows an ~~owner or~~ dDeveloper or Owner, who has established a line payback agreement for the extension of a water or sewer service to assign its right to future reimbursement, from benefiting parcels, to the City in exchange for immediate reimbursement by the City when funds are available.

~~Facility means any land, building, installation, structure, equipment, device, conveyance, area, or source from which there is or, with reasonable probability, may be a discharge.~~

Frontage means the entire length of that portion of a parcel of property that abuts a public street, public easement, or public right-of-way.

~~In-lieu payment means money or acceptable surety given to the City for the construction of public infrastructure at a later time.~~

Line payback agreement means an agreement between an ~~owner or~~ Ddeveloper or Owner and the City whereby the ~~owner or~~ Ddeveloper or Owner will receive reimbursement of expenses at a future time for its construction of an extension of a water or sewer service line across the frontage of one or more benefiting parcels of land and such benefiting parcels will receive a value from the construction as a result of connecting to City water or sewer service.

Line payback agreement notice means a document intended solely to provide notice of public infrastructure improvements constructed by others across the frontage(s) of a parcel and that a future charge may need to be paid to the Developer or Owner or City in order to connect to City water or sewer service in accordance with a line payback agreement.

Line payback charge means the amount of money a dDeveloper or eOwner must pay to the City for his share of all costs for water or sewer lines benefiting his parcel.

Maximum reimbursement amount means the amount of the total cost for that portion of the extension of a water or sewer line from which persons benefited by the extension, other than the dDeveloper or Owner, will be served.

~~Offsite means all portions of a water or sewer line that do not share frontage with the property being developed.~~

~~Owner or builder means a person who owns or leases real property within the City acting as a contractor in constructing any improvement upon the real property, which real property as improved is held by such person for his use or for rental, lease, or sale purposes.~~

Oversizing agreement means a reimbursement payment to a dDeveloper or Owner for installing, at the request of the City, water or sewer lines that are larger in diameter than what is necessary to provide service to the property.

Potable water means any water which is safe for human consumption pursuant to the standards set by the Arizona Department of Environmental Quality.

Publicly Owned Treatment Works (POTW) means a treatment works as defined by Section 212 of the Act which is owned by the City or another municipality and includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

Public potable water distribution system means the portion of the of the water distribution system that is owned by the City but does not include the water service line.

~~*Public potable water distribution system* means the portion of the of the water distribution system that is owned by the City but does not include the water service line.~~

~~*Public utility easement* means land which by conveyance of easement is dedicated to the public for the City's ownership and maintenance of a utility line and associated appurtenances.~~

Right-of-way means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to the general public for street, highway, alley, public utility, or pedestrian walkway purposes.

Water and/or sewer easement means property which is dedicated to the City in whole or in part for access to water and/or sewer line(s) and associated appurtenances.

Water service line means the pipe extending between the main line off the public potable water system and the water meter.

Sec. 49-212. - General policy.

- (a) There is established a policy and orderly program for extension of the services and facilities of the City's water and sewer system to serve and provide for areas inside and outside of the City's corporate limits for which City water or sewer service is available and to provide for extension participation programs, the development of line payback agreements, the collection of line payback charges, and for compensating a dDeveloper or Owner when the City requests the oversizing of water and/or sewer lines. The elements of the extension policy and program set forth in this article shall apply to all extensions of the City water and sewer systems.
- (b) Any request for water or sewer extensions shall be made to the City's Water Resources Division. Upon satisfactory compliance with the provisions of this article, the Ddivision Ddirector may authorize and execute a line payback agreement, and/or an extension participation agreement, and/or an oversizing reimbursement agreement.

Sec. 49-214. - Extensions.

- (a) Before an encroachment permit is issued for the extension of any water or sewer line to serve any privately owned real property, the dDeveloper or eOwner desiring such extension shall submit the following:
 - (1) A diagram of all property which will be benefited by any line to be installed.
 - (2) A statement that the City acquires ownership of any line and appurtenances upon completion and acceptance of the work by the City.
 - (3) A statement that the City's cost for inspecting the work shall be paid by the dDeveloper or eOwner through the issuance of an encroachment permit.
 - (4) If required, any easements or similar property rights necessary to install the water or sewer line.

- (b) The information required in paragraph (1) of subsection (a) necessary to complete the permit shall be provided by the ~~dDeveloper or eOwner~~ at his expense.
- (c) Once all City requirements are secured, construction of the water or sewer line ~~construction~~ may begin.

Sec. 49-215. – Line payback agreements.

- (a) Thirty (30) days prior to start of construction of an extension of any water or sewer line to serve any privately owned real property with a Single-Family ~~Edwelling~~, a ~~dDeveloper or Owner~~, desiring a line payback agreement with the City shall provide the following to the Water Resources Division.
 - (1) An 11-inch by 17-inch size copy of the approved plans.
 - (2) Three independent bids that contain the contractor's itemized construction costs for the water or sewer line extension, and the engineering design costs.
 - (3) A diagram of all property which will be benefited by the line installed including the assessor's parcel numbers, a legal description of each affected parcel, and frontage lengths.
 - (4) A formal request to the City on a form provided by the City for funding of the construction.
- (b) The proposed line payback agreement shall state to whom reimbursement shall be made and shall include a diagram of the properties and respective amounts of the line payback charges proposed to be collected from each property based on the cost per linear foot of frontage or such other equitable method of spreading the costs as the circumstances may dictate. ~~The agreement shall also state the applicable payback interest rate.~~
- (c) Proposed line payback agreements shall state the cost of water or sewer lines installed by a ~~dDeveloper or eOwner~~ from which others may be served. All related costs for the water or sewer line extension such as construction, design, plan review and management fees shall be submitted to the Water Resources Division in writing by the ~~dDeveloper or eOwner~~ and must be determined to be reasonable based on current circumstances. The Water Resources Division has sole discretion in determining whether a submitted cost is reasonable and applicable to the extension.
- (d) Subject to any guidelines or policies that may be implemented by the Water Resources Division, ~~dDeveloper or Owner~~ shall *notify all benefitting parcel property owners before construction begins* by certified or registered mail that construction of a water or sewer line will occur and a line payback agreement will be assigned to each benefitting parcel that will be recorded with the County Recorder upon the project completion. This initial notification to each benefitting parcel shall include the following:
 - (1) A letter explaining the line payback assignment.
 - (2) ~~The proposed line payback agreement and line payback agreement notice with information on the benefitting parcels and the respective costs of the future reimbursement.~~
 - (3) If the property owner of a benefitting parcel objects to either the cost allocation or any other procedural aspect of the line payback agreement, the property owner must submit a written request for a hearing to the Water Resources Division within thirty (30) days of the date of mailing the notice. The notice shall contain the address and identification of a person or position designated by the Division to receive requests for a hearing.
 - (4) Within five days following this mailing, ~~Developer or Owner~~ shall submit to the City a ~~signed affidavit or declaration verifying this mailing and listing of the names and addresses of all benefitting property owners to whom the notice was sent along with proof of the mailing.~~ If no

request for a hearing is received by the Water Resources Division within the time allowed, the Division may accept the proposed payback agreement as final.

- (5) If a request for hearing is received from one or more affected property owners, the Division shall set the date, time, and location of an administrative hearing on the proposed agreement. The City shall provide all affected property owners with notice of the hearing.
- (6) The Division Director will hold an administrative hearing at the stated date and time to establish each benefitting property's share in the cost of the improvements associated with the requested payback agreement. Any affected property owner may appear and be heard at the hearing. At the conclusion of the hearing, the Division Director may accept the line payback agreement as proposed or modify the allocation of percentages based on information received at the hearing. The Division Director shall issue a written decision within ten (10) business days of the conclusion of the hearing and a copy shall be mailed or emailed if requested to each affected property owner.
- (7) Any affected property owner who appears at the hearing may appeal the determination of the Division Director to the City Manager by submitting a Notice of Appeal to the Water Resources Division within ten (10) business days of the date when the Division Director issues a written decision. The City Manager or designee may review the Division Director's decision based on information and testimony submitted at the hearing or may, in his/her discretion, accept any additional information or testimony. If a notice of appeal is not timely submitted, the Division Director's decision shall become final. If an appeal is timely submitted, the decision of the City Manager or designee on appeal shall be final.
- (8) Once a decision is final, the results shall be used by the Water Resources Division to determine the maximum reimbursement amount to be included in the line payback agreement. The Developer or Owner or assignee shall receive line payback charges within the payback period only from those property owners who receive a benefit from the line the Developer or Owner installed.
- (9) The City will prepare both the line payback agreement and assignment and have notice of each recorded with the County Recorder.
- (e) Any agreement providing for reimbursement of the Developer or Owner shall run for a maximum payback period of:
 - (1) Ten (10) years after the date of acceptance of the line for agreements recorded before November 3, 2007,
 - (2) ~~Any agreement providing for reimbursement to Developers shall run for a maximum payback period of thirty (30) years for agreements entered between November 3, 2007 and June 30, 2018 and~~
 - (3) ~~Twenty (20) years after the date of acceptance of the line for agreements entered on or after July 1, 2018.~~

At the end of the maximum period, as determined by the City, all benefits or rights accruing to the Developer or Owner shall terminate.

- (f) Within sixty (60) days after construction completion of an extension of any water or sewer line to serve any privately-owned real property with a Single-Family dwelling, the Developer or Owner desiring a line payback agreement with the City shall provide the following to the Water Resources Division:
 - (1) A copy of the "letter of acceptance" issued by Water Inspection Services stating that the improvements conform to the approved plans and specifications.

- (2) An 11-inch by 17-inch size copy of the approved as-built construction drawings indicating actual facilities installed.
- (3) Receipts identifying actual design and construction costs, and proof that payment was made by the dDeveloper or Owner.
- (g) Upon receipt of the administrative charge defined in subsection (h) below and execution of the line payback agreement, the City shall record the agreement with the Maricopa County Recorder, as to each property that is subject to the agreement together with a notice of payback, setting forth the terms of this agreement. Once the payback charges or the maximum period has elapsed, the City will record with the Maricopa County Recorder a release of the original notice of payback.
- (h) The City shall establish a trust account or record the collection of line payback charges and payment of reimbursements. Sums collected shall be paid in accordance with the terms of the agreement, and within ninety (90) days of receipt by the City.
- (i) Line payback charges shall include an maximum simple interest rate applied to the stated amount in the final line payback agreement equal to the City's most recent water and/or sewer long term debt issuance interest rate, calculated at the time the payback agreement is recorded. The interest rate charge begins on the date the line payback agreement is recorded. ~~one (1) per cent plus the prime rate, as published by the board of governors of the Federal Reserve System per annum, or any portion thereof from the date the payback agreement is recorded.~~ This rate shall not change for the life of the reimbursement requirement. ~~Provided, however, any affected property owner who elects to pay the entire amount charged to such owner's parcel within sixty (60) days of the payback agreement becoming final shall not be required to pay any interest.~~ The Division Director may retroactively reduce the interest rate set forth in an existing payback agreement in order assure fairness and equitable implementation of the program.
- (j) Benefitting parcels who elect to pay the entire amount charged to such owner's parcel within sixty (60) days of the payback agreement becoming final shall not be charged interest. Benefitted parcels who owe a line payback charge to the City as a result of a connection to the public system may remit line payback charges in five (5) annual installments including the initial payment. Such owner must remit at least twenty (20) percent of the line payback charges at the time of connection to the water or sewer service and interest charges as described in 49-215 (i) shall continue to accrue on any unpaid balance. In order to be eligible for installment payments, the Developer or Owner must agree to a voluntary lien on the parcel in accordance with terms and conditions approved by the Division. In addition, any balance due shall be subject to an annual administrative charge equal to one (1) percent of the total outstanding balance.
- (j)(k) The City's cost of administration shall be paid by the OwnerDeveloper or Owner to the City prior to the execution of the line payback agreement. This administrative charge shall be five (5) percent of the total cost incurred by the OwnerDeveloper or Owner for the construction of the water and/or sewer lines from which persons other than the Developer or Owner will be served, with a maximum administrative charge of ten thousand dollars (\$10,000.00). Administrative charges will be distributed equally among the properties benefited if equal costs are applied to each parcel or based on the cost per linear foot of frontage.

Sec. 49-216. - Line payback charges.

When an existing line is to provide water or sewer service to a dDeveloper or eOwner, the required line payback charge, including all costs and interest, shall be paid to the City prior to:

- (1) The issuance of a permit authorizing connection to the public water or public sewer system.

- (2) The approval of a land division.

No person shall extend service from his tap to property for which a line payback charge has been recorded but has not been paid to the City without prior written approval from the City.

In the case of a parcel where the new line extends across its frontage, the Division Director may waive the payback charge against that parcel if (1) that parcel already receives service from the City prior to the new line extension, or (2) is already subject to an existing, valid payback agreement resulting from a previous line extension.

In the case of where a Developer or Owner of a parcel is required to extend a public line across more than one frontage of its parcel, the Division Director may modify or waive the requirement for the Developer or Owner to be responsible for costs for more than one of the parcel frontages.

Sec. 49-218. - Line payback agreements for main or trunk extensions by City.

If the City elects to install, increase in size, or extend a water or sewer line across benefitting parcels, it shall be entitled to prepare a line payback agreement with itself as set forth in this article.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 26th day of August, 2021.

CITY OF SCOTTSDALE, an Arizona municipal corporation

ATTEST:

By: Ben Lane

Ben Lane, City Clerk

By: David D. Ortega

David D. Ortega, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Sherry R. Scott, City Attorney

By: Eric C. Anderson, Senior Assistant City Attorney